

INDEMNITY FOR SPANISH SUBJECTS IN NEW ORLEANS.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

*A report of the Secretary of State, and a communication from the Spanish Minister, asking indemnity for Spanish subjects in New Orleans.*

JUNE 23, 1852.

Read, and referred to the Committee on Foreign Affairs, and ordered to be printed.

*To the Senate and House of Representatives :*

I transmit herewith, for your consideration, a report from the Secretary of State, accompanied by a communication from his excellency Señor Don A. Calderon de la Barca, Envoy Extraordinary and Minister Plenipotentiary of her Catholic Majesty, claiming indemnity for those Spanish subjects in New Orleans who sustained injury from the unlawful violence of the mob in that city, consequent upon hearing the news of the execution of those persons who unlawfully invaded Cuba in August, 1851. My own views of the national liability upon this subject were expressed in the note of the Secretary of State to Mr. Calderon, of the 13th November, 1851, and I do not understand that her Catholic Majesty's minister controverts the correctness of the position there taken. He, however, insists that the 13th article of the treaty of 1795, promises indemnity for such injuries sustained within one year after the commencement of war between the two nations; and although he admits this is not within the letter of the treaty, yet he conceives that, as between two friendly nations, it is within the spirit of it.

This view of the case is, at his request, submitted for your consideration. But whether you may deem it correct or not, there is perhaps one ground upon which this indemnity, which cannot be large in amount, may be granted without establishing a dangerous precedent, and the granting of which would commend itself to the generous feeling of the entire country, and that is this: the Queen of Spain, with a magnanimity worthy of all commendation, in a case where we had no legal right to solicit the favor, granted a free pardon to the persons who had so unjustifiably invaded her dominions and murdered her subjects in Cuba in violation of her own laws, as well as those of the United States, and the public law of nations. Such an act of mercy, which restored many misguided and unfortunate youths of this country to their parents and friends, seems to me to merit some cor-

responding act of magnanimity and generosity on the part of the government of this country; and I think that there can be none more appropriate than to grant an indemnity to those Spanish subjects who were resident among us and who suffered by the violence of the mob, not on account of any fault which they themselves had committed, but because they were the subjects of the Queen of Spain. Such an act would tend to confirm that friendship which has so long existed between the two nations, and to perpetuate it as a blessing to both; and I therefore commend it to your favorable consideration.

MILLARD FILMORE.

WASHINGTON, *June 14, 1852.*

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DEPARTMENT OF STATE,  
*Washington, June 12, 1852.*

The Secretary of State has the honor to lay before the President a translation of a note of the 22d of April last, addressed to this department by Señor Don A. Calderon de la Barca, her Catholic Majesty's Envoy Extraordinary and Minister Plenipotentiary, asking that those Spanish subjects whose property was destroyed in the popular tumult at New Orleans in August last, may be indemnified therefor. The Secretary of State accordingly suggests that Congress be recommended to make provision for the reparation desired.

Respectfully submitted,

DANL. WEBSTER.

To the PRESIDENT OF THE UNITED STATES.

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LEGATION OF SPAIN,  
*Washington, April 22, 1852.*

In pursuance of his duty, the undersigned, Envoy Extraordinary and Minister Plenipotentiary of her Catholic Majesty, informed his government in due time, that in consequence of the jury at New Orleans not having been able to agree, they had not succeeded in proving who had been the instigators of the riot which had been excited in that city against Spanish subjects in August last, and that the instigators aforesaid had, therefore, remained unpunished.

Her Catholic Majesty's government has, in reply, given instructions to the undersigned, in consideration of which he proceeds to submit to the noble rectitude of the honorable Daniel Webster some few remarks, which he flatters himself will receive his attention.

The above mentioned case, the fact of there having been no agreement, neither on the part of the jury in the trial against the instigators and actors in the piratical expedition which was repulsed at Cardenas, and the recent disagreement likewise of the New York jury, in the suit which had been instituted there against O'Sullivan, the Hungarian Schlessinger, Captain Lewis and others, of which the two last mentioned had not only formed part of the Cardenas expedition, but also of that which the steamer Cleopatra had proposed to convey, and of the one that landed at Bahia Honda,

have naturally given cause to doubt whether her majesty's subjects who were robbed of their property in New Orleans, will obtain from the local authorities of that place, the just compensation which they claim. The government of her Catholic Majesty has considered the principle laid down by the honorable Secretary of State in his note of the 13th of November last, that foreigners must subject themselves to the laws which are in force in the country which they have selected for carrying on business in, and it does not pretend to controvert them, seeing that the application of those laws must be reciprocal. There is, however, with due deference be it said, a striking difference between the occurrences in question and ordinary individual wrongs. The only origin and exclusive cause of all the disasters that the subjects of her Catholic Majesty experienced in New Orleans in the month of August last, was the invasion of the island of Cuba by American citizens, organized, equipped and armed for that purpose in the territory of the United States, in spite of the warnings of the upright supreme magistrate of the republic, and of the laws of the land, and in defiance of moral precepts and the laws of nations.

The personal outrages and plunder of houses and business establishments belonging to the subjects of her Catholic Majesty were not the effect of a riotous attack on the part of the inhabitants of New Orleans; they were not individual acts perpetrated without cause upon individuals. The most active abettors and actors in those lamentable scenes were citizens of the United States who had assembled in that city from various parts of the Union, with arms in hand, and who were watching for an opportunity to embark and follow those who had preceded them, for the purpose of seizing the island of Cuba, where, with this object in view, they had in a perfidious manner introduced war, and spilled the blood of those who had performed the sacred duty of defending their soil. In short, the plundering of the property of Spaniards in New Orleans was an episode. It was one of the consequences of the bloody and illegal invasion of a friendly territory in the midst of peace. Those who took part in the drama dispersed—they cannot be reached—and even if they were, and these persons should be identified after long litigations and consequent expenses on the part of the claimants, the latter have no means of obtaining redress for the damages sustained. Not wishing to weary the attention of the Secretary, because he thinks it unnecessary, the undersigned will not quote what Vattel (Book II.) and other more modern writers on common law have written in favor of the claimants. For the same reason he will likewise abstain from alluding to the spirit of the treaty of 1795, and will only refer to the thirteenth article of the same, which reads as follows:

“For the better promoting of commerce on both sides it is agreed that if a war should break out between the said two nations, one year after the proclamation of war shall be allowed to the merchants, in the cities and towns where they shall live, for collecting and transporting their goods and merchandize, and if any thing be taken from them, *or any injury be done them*, within that term by either party, *or the people or subjects of either*, full satisfaction shall be made for the same by the government.”

If, then, it is agreed that the government is the party which must make redress for injuries occasioned, even one year after a formal declaration of war, it appears to the undersigned that *a fortiori* this obligation loses none of its force, but, on the contrary, when the damages have been occasioned

by the people and the citizens of the United States, in time of profound peace, not against this or that individual, but against a whole class of men; not in consequence of private wrongs, which are within the pale of the jurisdiction of ordinary tribunals, but from deadly hatred against the nationality of the parties aggrieved.

If these reflections should succeed in inducing the honorable Secretary of State to look upon the question in this light, and in doing so he should further take into consideration the friendly relations which happily exist between the two countries, the undersigned does not hesitate in flattering himself that the Hon. Daniel Webster will find, in his equity and wisdom, the generous remedy that the condition to which several peaceful, industrious, and honorable Spaniards have been reduced by violence in New Orleans requires. The undersigned cherishes a hope that his Excellency the President will be pleased to give his assistance by recommending to Congress the appropriation of the necessary funds for this purpose, as he recommended in the instance of the promised indemnity to the consul, Don Ignacio Laborde. From the magnanimous sense of justice of the representatives of the Union, one cannot but confidently hope that such recommendation will be attended to. In the meanwhile the undersigned avails himself of this opportunity to renew to the Hon. Daniel Webster the assurances of his most distinguished consideration.

A. CALDERON DE LA BARCA.

The Hon. DANIEL WEBSTER,

*Secretary of State of the United States.*